

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

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WASHINGTON, DISTRICT OF COLUMBIA
20001-4597

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing
(day/month/year) **20 APR 2005**

Applicant's or agent's file reference

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/US04/34625

International filing date (day/month/year)

21 October 2004 (21.10.2004)

Priority date (day/month/year)

22 October 2003 (22.10.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A01N 63/00 and US Cl.: 424/93.4

Applicant

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
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Alexandria, Virginia 22313-1450

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Authorized officer

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/34625

Box No. I Basis of this opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US04/34625

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>None</u>	YES
	Claims <u>1-24</u>	NO
Inventive step (IS)	Claims <u>1-24</u>	YES
	Claims <u>NONE</u>	NO
Industrial applicability (IA)	Claims <u>1-24</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-24 lack novelty under PCT Article 33(2) as being anticipated by Von Eichel-Streiber et al (US2003/0103987 A1) published June 5, 2003.

Claims are drawn to method and kit for treating tumors in mammals comprising administering a bacterium, *Clostridium novyi* or *C. sordellii* to the mammal and agent to slow growth of tumor.

Von Eichel-Streiber et al teach that the bacterium can produce a toxin which is lethal to tumor or a cancer. Note page 6, column 2, paragraph 0072, all lines and see the abstract, as well as page 1, column 1, all lines. The toxins are produced in culture containers that contain the bacterium (i.e. kit). The inhibitor enzyme and toxic agents produced by the bacteria are inherent to the reference since they teach that these agents are produced.

Claims are identical to the cited disclosure and is therefore, considered to be anticipated by the cited reference.

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